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10/007,031	11/08/2001	Matthew R. Blouin	INL-032	2442

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Kirkpatrick & Lockhart Preston Gates Ellis LLP  
(FORMERLY KIRKPATRICK & LOCKHART NICHOLSON GRAHAM)  
STATE STREET FINANCIAL CENTER  
One Lincoln Street  
BOSTON, MA 02111-2950

EXAMINER
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ALEXANDER, LYLE

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1797

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/007,031  
Filing Date: November 08, 2001  
Appellant(s): BLOUIN ET AL.

**MAILED**  
**OCT 24 2007**  
**GROUP 1700**

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Dr. Ronda P. Moore  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 7/30/07 appealing from the Office action mailed 1/18/07.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

5,285,907

Franchere et al.

02-1994

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,3-10,12-16 and 27-35 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Franchere et al. (USP 5,285,907).

Franchere et al. teach a sample holder forming a strip of modular units(10) that support tubes and other containers holding body fluids (see the abstract). The panels of units are attached by buttons(20,30) and holes(22,34) which have been read on the claimed "... wherein each well is physically connected to an adjacent well ...". Figure 2 illustrates all sides have the same arrangement of buttons and holes and has been read on the claimed " ... wherein said first and second engagement pieces are disposed on the same side wall ...". Figure 3 teaches a plurality of connected wells arranged in a linear array where each well is connected to an adjacent well.

Franchere et al. teach in column 2 lines 50+ modular unit(10) with a bottom surface/wall(12) that has been read on the claimed "said well each comprising a bottom base ...".

Claim 28 specifies attachment by "sliding" the two walls against each other. This claim is directed to a method of use and does not positively claim means with this specialized function. It is well settled the method of intended use of an apparatus is of no patentable moment with respect to pending apparatus claims. Furthermore, the

Office maintains the walls of Franchere et al. could be slid next to each other for engagement.

Claims 29-34 specify an optical window. The Office maintains Franchere et al. teach openings, such as (26), that read on the claimed optical window.

Claims 27 and 35 are directed to a first "flange" and a first "slot" for physical attachment of the wells. The Office has read the claimed "flange" on the taught buttons(20,30) and holes(22,34) which have been read on the claimed "slot".

#### **(10) Response to Argument**

Appellant states on page 6 the instant invention teaches wells to contain a fluid whereas Franchere teaches wells to contain a specimen container. Claim 1 lines 5-6 claim "... each if said plurality of wells **for containing a fluid sample** therein..." The instant claim language only requires that capability to contain a fluid sample. No specific structure of the well has been claimed. The instant claims do not exclude the presence of additional structures, such as the taught specimen containers, in the well. The wells taught by Franchere have the capability for containing a fluid sample therein and are indistinguishable from the instant claims.

Appellant states on page 7 that Franchere fails to teach the claimed limitations "... wherein each well is physically connected to an adjacent well..." Appellant states Franchere does not teach the test tubes physically connected to an adjoining test tube. The Office does not agree with Appellants' characterization of the pending claims. The claims require each well as being physically connected to an adjacent well. The Office

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has properly read the claimed "wells" on the taught modular units (10) with openings (26). Franchere teaches each modular unit and well is physically connected to an adjacent counterpart. The Office does not believe the scope of the pending claims requires each test tube, within each modular unit (10), directly attached to the adjacent test tube, as argued by Appellant. The Office maintains Franchere has been properly read on the claims.

Appellants' state on page 8 Franchere teaches test tubes that "sit in " or are "held" or "supported" by the modular units. The Office agrees with this characterization of Franchere. Appellants' further state Franchere does not teach any means to join the test tubes with the modular unit. These remarks are not commensurate in scope with the pending claims that only require the capability "... for containing a fluid sample wherein..." and are fully met by Franchere.

On page 9 Appellants mirror the above arguments as applied to claim 35. The Office reiterates that claim 35 requires "... wells for containing a fluid sample therein..." and has been properly read on Franchere who teaches modular units(10) with openings(26) that form a well for containing a fluid in a container. Appellants also state Franchere does not teach physical attachment of the test tubes by a flange. These remarks are not commensurate in scope with the pending claims that only require attachment of the wells/(modular units). The claimed "flanges" have been properly read on buttons(20,30) and holes(22,34) have been properly read on the claimed "slots".

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Lyle A. Alexander



**LYLE A. ALEXANDER**  
**PRIMARY EXAMINER**

Conferees:

  
Rom Demando  
Jill Warden